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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,001	05/10/2001	Michel Anthony Pugel	PU010081	5850

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08/04/2004

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EXAMINER

LI, SHI K

ART UNIT PAPER NUMBER

2633

DATE MAILED: 08/04/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/853,001

Applicant(s)

PUGEL, MICHEL ANTHONY

Examiner

Shi K. Li

Art Unit

2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 19,20 and 22-38.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: Notice of Reference Cited (PTO-892)

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that since Harrington uses FM for RF transmission and will not exceed the FCC rules and, therefore, a skilled artisan would not modify the IR repeater in Harrington to use AM as taught in Tigwell. This is not true. For non-licensed transmitters, FCC does not limit the type of modulation. OET Bulletin No. 63, "Understanding The FCC Regulations for Low-Power, Non-Licensed Transmitters", October 1993, states on page 7, "Radiated emission limits", "If a particular transmitter can comply with the general radiated limits, and at the same time avoid operating in one of the restricted bands, then it can use any type of modulation (AM, FM, PCM, etc.) for any purpose." 47 CFR 15.231(c) states, "The bandwidth of the emission shall be no wider than 0.25% of the center frequency for devices operating above 70 MHz and below 900 MHz... Bandwidth is determined at the points 20 dB down from the modulated carrier." Harrington operates with a IR carrier frequency of 40 KHz while Tigwell operates at an IR frequency of 75 KHz. It is well known in the art that the higher frequency of the modulating signal the higher the bandwidth of the modulated signal. Bandwidth limitation is the reason for Tigwell to avoid transmitting RF using IR carrier frequency as clearly stated in col. 1, line 54. Applicant argues that Harrington's solution is much simpler. The combination of prior art may provide several solutions to a problem. Obvious solution does not become patentable simply because there are better solutions. See *In re Gurley*, 31 USPQ2d 1130 (Fed. Cir. 1994). The same response is applicable to applicant's argument regarding Thomas in view of Tigwell, Eisaku and Smith.


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